

#### Members

Rep. Trent VanHaaften, Chairperson  
Rep. Scott Pelath  
Rep. Phil GiaQuinta  
Rep. Matt Bell  
Rep. Jack Lutz  
Rep. Jackie Walorski  
Sen. Ron Alting, Vice-Chairperson  
Sen. James Merritt  
Sen. John Waterman  
Sen. Robert Deig  
Sen. James Arnold  
Sen. Greg Taylor



# INTERIM STUDY COMMITTEE ON ALCOHOLIC BEVERAGES ISSUES

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Authority: IC 2-5.5-4

## MEETING MINUTES<sup>1</sup>

**Meeting Date:** September 9, 2009  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 233  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Rep. Trent Van Haaften, Chairperson; Rep. Scott Pelath; Rep. Phil GiaQuinta; Rep. Matt Bell; Rep. Jack Lutz; Rep. Jackie Walorski; Sen. Ron Alting, Vice-Chairperson; Sen. James Merritt; Sen. John Waterman; Sen. Robert Deig; Sen. James Arnold; Sen. Greg Taylor.

**Members Absent:** None.

### 1. Call to order and introduction of members

Rep. Van Haaften called the meeting to order at 1:05 p.m. Committee members and staff were introduced.

### 2. Committee study topics and operating policy.

Rep. Van Haaften said the second meeting of the Committee would be held on September 15, and the subject of the meeting would be alcoholic beverage sales on Sundays and on election days. At the third and last meeting on October 20, the Committee would receive testimony on limitations on the amount of point of sale purchases and additional permits for beer wholesaler warehouses. He said that the Committee would not be making recommendations on the issues discussed at the October 20 meeting. At the October 20

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

meeting the Committee will prepare a final report. He said that he recognized that the new Committee members may be hesitant to vote on issues that were discussed by the Committee last year.

### **3. Testimony and committee discussion**

#### **(A) The Alcohol and Tobacco Commission's (ATC's) classification of dealer permits for purposes of the quota provisions under IC 7.1-3-22-4.**

*Alex Huskey, Superintendent, Indiana State Excise Police*

Mr. Huskey discussed the dealer quota statute, IC 7.1-3-22-4, which provides in part that a city or town that has a population of less than 15,001 may have one dealer's permit issued for each 2,000 persons. He explained that the ATC categorizes the permits issued to grocery stores as "grocery store permits" and the permits issued to drug stores as "drug store permits", but they are both dealer permits. IC 7.1-3-22-4 does not distinguish between the two permits, referring only to dealer permits. He said that since the 1970's, the ATC has interpreted the reference in IC 7.1-3-22-4 to "one dealer's permit" to mean one grocery store permit and one drug store permit, for a total of two permits (as opposed to interpreting it to mean one of either type of permit for a total of one permit). He said that under the ATC's interpretation, a city or town of 2,000 persons would receive a total of two dealer permits (one drug store and one grocery store permit), while a city or town of 4,000 persons would receive a total of four dealer permits (two grocery store and one drug store permit). Mr. Huskey said that he would provide the Committee with a list of all alcoholic beverage permit license types issued by the ATC.

*Ed Dunsmore, Executive Secretary, Hearing Judge, ATC*

Mr. Dunsmore described the permit application procedure and hearing process. He said that upon receiving a permit application, the ATC first determines whether there are permits available under the quota, and if the ATC's software indicates there are no available permits, the application is never forwarded to the local alcoholic beverage board for consideration. Mr. Dunsmore said the question is whether the software calculates the quota consistent with the intent of IC 7.1-3-22-4.

#### **(B) Evaluating the population factors that apply to the issuance of alcoholic beverage permits, particularly issues pertaining to the issuance of a three-way permit to a restaurant in a city or town with a population of less than 25,000 under IC 7.1-3-22-3.**

*Rick Dickman, Redevelopment Director, Town of Clarksville*  
*Greg Isgrigg, Town Council, Clarksville*

Mr. Dickman explained that Clarksville does not have any three way permits (permits to sell beer, wine, and liquor for consumption on the licensed premises) available under the quota, which is blocking commercial development. The national restaurant chains will not locate in Clarksville unless they can obtain three way licenses. Independently owned restaurants in Clarksville have sold their existing three way licenses for over \$100,000.

Mr. Dickman explained that Clarksville doesn't want additional licenses, it only wants to be able to "elevate" their existing unused one and two way licenses to three way licenses under IC 7.1-3-20-11.5. He explained that Clarksville has 11 unused one and two way permits. IC 7.1-3-20-11.5 would allow the ATC to issue three way restaurant permits to applicants who hold these one or two way permits. He said the problem is that the population parameters in the statute would have to be amended to 25,000 or less to include Clarksville (currently the statute applies to municipalities with a population of 20,000 or less). Greg

Isgrigg said that he agreed with Mr. Dickman's statements.

*Robert Super, Precision Development, LLC*

Rep. Van Haaften explained that Mr. Super testified for the Committee last year regarding the unavailability of permits for the development project in Schererville.

Mr. Super distributed to the Committee a handout regarding the Oak Street Commons development project in Schererville (Exhibit 1). Mr. Super explained that the handout is an updated version of the handout he distributed last year. Mr. Super explained that the unavailability of alcoholic beverage permits at a reasonable cost has hamstrung the project. Mr. Super made the following points:

- The Oak Street Commons project is a Project Greenway-- a coordinated public/private initiative to create an economic development corridor while improving environmental obsolescence and correcting infrastructure defects.
- The problem with the current quota is that it is based on residential population only without considering all three factors that drive demand: (1) vehicle traffic; (2) daytime office and business population; and (3) residential population. He wants more licenses to be available and their availability driven by demand.
- Mr. Super discussed the economic benefits that the area will receive if the project is completed, including collecting additional taxes and the creation of additional jobs.
- Mr. Super explained that other states make it much easier to obtain alcoholic beverage licenses. In Illinois for instance, licenses are issued at the local level and are available at a moderate fee.
- The cost of purchasing an existing license varies with the location. On the border between Dyer and Schererville, some three way licenses are going for \$800,000, while a three way license in Dyer can be obtained for about \$60,000.

Sen. Taylor pointed out that issuing additional licenses could reduce the value of the permits of "mom and pop" (independent) restaurants. Rep. Walorski said that the Mishawaka area is facing the same development problems as Schererville because of the unavailability of permits. She said the going price for a three way permit is \$250,000 in that area.

*Rhonda Cook, Indiana Association of Cities and Towns*

Rhonda Cook said that McCordsville in Hancock County is affected by the limitation on permits. She said that McCordsville has a population of 1,134 according to the 2000 census figures, but the town has an actual population of approximately 5,000. Since the quota relies on census figures, McCordsville is unable to get any additional permits until the 2010 census is completed. Ms. Cook said the town of Munster also reported similar problems.

*Nancy Beals, Drug Free Marion County*

Ms. Beals distributed materials regarding underage drinking and the distribution of alcohol licenses in Marion County (Exhibit 2). Ms. Beals made the following points:

- Of the 1667 alcohol licenses in Marion County, 761 are for incorporated areas of Marion County, 640 are for unincorporated areas, and 267 are for the whole county.

- The ATC identified 291 unincorporated areas in Marion County. Ms. Beal expressed concern as to how these areas are obtaining licenses. The ATC is recognizing neighborhood developments as unincorporated areas, although some developments are as small as eight houses. Licenses for fraternal clubs, catering, and hotels are not recognized by the quota, so the density is even greater than the quota system takes into account. This method of distributing licenses leads to spotty development.
- Ms. Beals described an initiative brought in San Diego, California to allow municipalities to control the number of alcohol licenses in their communities. Under the law, if an area has a high density of licenses and/or a high crime rate, the alcoholic beverage control board must deny the permit unless there is a finding of need termed "public convenience or necessity".

*Chris Clifford, Harry and Izzy's Restaurant*

Mr. Clifford said that he is a part owner of an independent restaurant. He explained how independent restaurants are at an economic disadvantage in competing with national chain restaurants for alcohol permits. He suggested that a certain percentage of available alcoholic beverage permits should be set aside for Indiana residents or that Indiana residents should receive a discount on the cost of a permit. He described the difficulties of opening a restaurant when the entire operation rides upon whether a permit can be obtained.

### **(C) Mandating liquor liability insurance to be carried by bars and taverns.**

*Allen Messer, President and CEO of Illinois Casualty Co.*

Mr. Messer explained that his company only provides insurance for the food and beverage industry. Mr. Messer provided a written copy of his testimony regarding how requiring mandatory financial responsibility for the furnishing of alcoholic beverages is good public policy (Exhibit 3). Mr. Messer said that while Indiana has a dram shop liability law, it does not require liquor liability insurance or proof of financial responsibility. As a result, many businesses do not have the assets to pay a dram shop liability claim. Mr. Messer distributed a handout showing sample premiums for establishments in various Indiana communities (Exhibit 4) and a handout answering frequently asked questions regarding liquor liability insurance (Exhibit 5).

*J. Lee McNeely, attorney*

Mr. McNeely explained that he represented the estate of William Roland Stine, a member of the Indiana House of Representatives who was killed by a drunk driver. Mr. McNeely distributed a copy of the Indiana Court of Appeals opinion in the lawsuit brought by the estate (Exhibit 6). Mr. McNeely also distributed a copy of a letter from the family of William Roland Stine (Exhibit 7). Mr. McNeely explained that the tavern that served the drunk driver did not have liquor liability insurance, only commercial liability insurance, which excluded coverage for dram shop liability. Mr. McNeely said that he brought suit against the tavern under common nuisance law in an attempt to recover under the commercial liability policy. The Indiana Court of Appeals found that an action was unavailable under the common nuisance law, because the legislature intended for the dram shop liability statute to be the exclusive remedy.

*Lisa Hutcheson, Indiana Coalition to Reduce Underage Drinking*

Ms. Hutcheson said that establishments that have liquor liability coverage are more likely to have server training and take other precautions, so insurance coverage is beneficial

in that regard also.

*John Livengood, Indiana Restaurant Association*

Mr. Livengood said that he is neither for nor against mandatory liquor liability insurance, because there is no actual legislation to be discussed. He said that if there is mandated liquor liability coverage there also must be liability caps to make the coverage available and affordable.

*Tom Hastings, Indiana Trial Lawyers Association*

Mr. Hastings said he agrees with Mr. Livengood that there needs to be a balance between economics and public safety issues. He pointed out that most dram shop liability cases involve catastrophic injury or death. Mr. Hastings said that Indiana does place caps on medical malpractice liability (\$1.25 million) and government tort liability (\$700,000). If mandatory insurance was required, a tavern that had claims against it would have to obtain high risk coverage, or close its doors if it couldn't get insurance. He said this is comparable to an individual who gets a series of DUIs.

*Don Marquardt, Indiana Licensed Beverage Association*

Mr. Marquardt made the following points:

- The ATC should provide education to bars and restaurants as to why they should voluntarily obtain liquor liability insurance. Insurance companies should do more to sell liquor liability insurance.
- The timing of this legislation is not good considering that the economy is down and unemployment is up.
- In 2011, mandatory server training begins.
- The Committee needs to look at some real statistics as to how many dram shop cases there have been where there was no recourse or no recovery. They need to see whether this is a small number of cases that would not warrant mandatory insurance.

**(D) Implementing uniform closing hours for each day of the week under IC 7.1-3-1-14 and IC 7.1-5-10-1.**

*John Livengood, Indiana Restaurant Association*

Mr. Livengood explained that IC 7.1-3-1-14 provides that bars and restaurants can sell alcoholic beverages from 7 a.m. to 3 a.m., Monday through Saturday, but on Sunday, they can only sell beverages from 10 a.m. to 12:30 a.m. the following day. The proposal is to make the Sunday operating hours the same as the other days of the week, especially where there are special events such as the Super Bowl, or other tourism, convention, or sporting events.

*Don Marquardt, Indiana Licensed Beverage Association*

Mr. Marquardt explained that he owned a bar located about an hour from Chicago.

He said that on Sunday, Labor Day weekend, they had to stop serving alcohol at 12:30 p.m. although they had a full crowd.

*Chris Clifford, Harry and Izzy's Restaurant*

Mr. Clifford said that the early closing time on Sunday is not a positive reflection on the city of Indianapolis. The city hosts events drawing in thousands of visitors such as the Final Four, Super Bowl, and Colts games and they can't accommodate visitors want to go out and celebrate after these events.

*Mike Hocker, Evansville*

Mr. Hocker said that the General Assembly needs to be careful how they address this issue, making sure that they address only on premises licenses and not off premises licenses.

*Lewis Coulter, President, Indiana Licensed Beverage Association*

Mr. Coulter said that the issue that Mr. Hocker was addressing was Sunday sales. He said that the Governor in the past made an exception by executive order to allow bars and restaurants to remain open on Sunday when New Year's Eve fell on a Sunday.

Rep. Van Haaften adjourned the meeting at 3:30 pm.